Law Enforcement (Powers And Responsibilities) Bill

Second Reading
In Committee
Third Reading

Corrected Copy 21/11/2002

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) BILL

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Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.44 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Law Enforcement (Powers and Responsibilities) Bill* 2002. The Bill represents the outcome of the consolidation process envisaged by the Royal Commission into the NSW Police Service to help strike a proper balance between the need for effective law enforcement and the protection of individual rights.

This Bill constitutes significant law reform. It radically simplifies the law in relation to law enforcement powers, setting out in one document the most commonly used criminal law enforcement powers and their safeguards.

Previously complex and diverse law enforcement powers and responsibilities once buried in numerous statutes and casebooks have been consolidated into the Bill, so that the law is now easily accessible to all members of the community.

Matters included in the Bill represent either a codification of the common law, a consolidation of existing statute law, a clarification of police powers, or a combination of these.

In acknowledgement of the significance of this legislation, the Government has consulted widely in the preparation of this Bill. Stakeholders and other potentially interested parties were afforded an opportunity to comment on an Exposure Draft of the Bill.

The majority of amendments to the Exposure Draft were made in response to the 29 submissions received.

While generally the Bill simply re-enacts existing legislation, it does in some circumstances make amendments intended to more accurately reflect areas of the common law or to address areas in the existing law where gaps have been identified. Unless expressly stated, the Bill is not intended to change the common law.

I do not propose to address each clause of the Bill separately. Unless otherwise stated, the effect of the provisions are intended to reflect the current meaning already provided in the statute books.

I will however address the areas where there has been substantive reform, in particular:

- Revised powers of entry
- Simplification of personal search powers, and related safeguards
- New provisions regarding notices to produce
- New provisions regarding crime scenes
- Revised powers of arrest
- Revised powers in relating to property in police custody
- New, general safeguards that apply broadly to the exercise of all police powers.

Powers of Entry

Part 2 of the Bill codifies the existing common law powers of entry.

Clause 9 provides that a police officer may enter premises if the police officer believes on reasonable grounds that a person has suffered significant physical injury or that there is imminent danger of significant injury to a person.

This power to enter premises to prevent death or significant injury represents a clarification of police powers at common law and reflects legitimate community expectations of the role of police.

Clause 9 also enacts the common law power of police to enter premises where a breach of the peace is being or is likely to be committed and it is necessary to enter immediately to prevent the breach of peace.

The Bill deliberately does not define the term 'breach of the peace'; this is a well-established concept at common law, and will remain so.

A police officer who enters a premises by virtue of the powers in clause 9, may remain on the property only as long as is reasonably necessary in the circumstances.

Clause 10 of the Bill codifies the existing powers of police

- to arrest a person,
- to detain a person under another Act, or
- to arrest a person named in a warrant,
- where the officer believes on reasonable grounds that the person is in the premises.

Search & Seizure without warrant

Part 4 of the Bill details the powers of search and seizure without warrant.

Police powers to conduct personal searches have been significantly simplified without reducing or increasing existing powers, so that police are able to readily understand the types of search that they may undertake, and the community can understand more readily the powers that police have in this respect.

A regime of 'three tiers of searches' has been adopted, and safeguards have been introduced to ensure that civil liberties are upheld and that the integrity of the police process is not compromised. I will address the new regime and safeguards in greater detail shortly.

Clause 23 (2) addresses a gap in the law identified in the course of consolidation: While at common law police have the power to search a person who has been arrested **on suspicion of committing an offence,** it is not clear whether police have the power to search a person arrested otherwise than for an offence, for example, where a person has breached a bail condition.

Clause 23 (2) provides that police will have the power to search a person arrested other than for an offence in limited circumstances, that is, where the arresting police officer has a **reasonable suspicion** that the arrested person who is being taken into custody is carrying something which she or he may use in a way that could **endanger** a person, or assist a person to **escape from custody** .

This provision addresses concerns about safety of police and others in custody and is a justifiable law enforcement power.

The search powers set out in Clause 23 are powers that may be exercised at or after the time of arrest. These powers should be distinguished from those set out in Clause 24, which sets out the search powers that may be exercised by a police officer after a person has been arrested and taken into custody, for example, at a police station.

Division 3 of this Part consolidates the existing police power to search for knives and other dangerous implements. The existing provisions have been substantially redrafted to ensure that the applicable powers and safeguards are consistent with the three-tiered search regime detailed in Division 4 of this Part, which I shall come to shortly.

The redrafted provisions **do not extend or restrict** the powers police currently have to search for a knife or other dangerous implement in a public place or school. The existing safeguards have either been incorporated into the safeguard provisions which apply generally to all personal searches conducted under the Bill, or have been incorporated within the new definitions of the searches.

Division 4 of Part 4 details provisions that apply to all personal searches conducted under the Bill. In order to provide greater regulation of police search powers, the Bill substantially adopts the three-tiered personal search model contained in the *Crimes Act 1914 (Cth)*, which in turn is based on the Model Criminal Code.

The Bill introduces **a regime of frisk, ordinary and strip searches in respect of all personal searches** conducted under the Bill. The Bill details the circumstances in which each of the three levels of search may be warranted and **provides safeguards to protect the privacy and dignity of persons being searched**. The Bill provides specific safeguards for any person subjected to a strip search and specific safeguards for children and persons with impaired intellectual functioning who are subjected to a strip search.

A **frisk search** is defined as a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing AND a examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

An **ordinary search** is defined as a search of a person or articles in the possession of a person that may include requiring the removal and examination of specified items of outer clothing.

A **strip search** is defined as a search of a person or of articles in the possession of the person that may include requiring the person to remove all of his or her clothes (but only those clothes necessary to fulfil the purpose of the search) and a visual examination of the person's body and a search of those clothes. A strip search may only be carried out where the police officer suspects on reasonable grounds that it is necessary for the purposes of the search and that the seriousness and urgency of the circumstances require a strip search.

The Bill requires that the least invasive kind of search practicable in the circumstances should be used.

The Bill introduces **safeguards** intended to preserve the privacy and dignity of all persons subjected to personal searches under the Bill.

Clause 32 incorporates a number of safeguards intended to ensure that a police officer conducting **any search** has regard to the searched person's right to privacy and maintenance of dignity throughout a search.

The police officer must comply with the safeguards set out in section 32, unless it is not reasonably practicable in the circumstances to do so. What is reasonably practicable in the circumstances will of course be dependent on the individual circumstances.

These safeguards require the officer

- to **inform the person of the nature of the search**,
- request their **cooperation**,
- conduct the search **out of public view** and as **quickly** as possible.
- not to **question the person searched** at that time in relation to a suspected offence.

Clause 33 provides specific safeguards for a person subjected to a **strip search**. The safeguards in subclauses 33 (1)-(3) which relate to privacy, the absence of people not necessary for the purpose of the search and the presence of support persons, **must be complied with unless it is not reasonably practicable in the circumstances**.

Clause 33 (3) provides for the presence of **a support person for children aged between 10 and 18, and persons who have impaired intellectual functioning** who are subject to strip searches. This provision has been included to protect the interests of those people who may not be able to protect their own interests, and may also assist police in the conduct of the strip search.

The safeguards in subclauses 33 (4) to (6) are, without exception, **mandatory** and clarify that a strip search is, in fact, a **visual** search and **not an examination of the body by touch**.

Clause 34 provides that **a child under 10 may not** be strip-searched.

The safeguards in Division 4 are **in addition to safeguards in Part 15** that apply generally across the Bill. The safeguards better define what a police officer can do when conducting a search, and ensure the integrity of the criminal justice processes.

Search and Seizure with warrant or other authority

Part 5 repeals and re-enacts existing powers set out in *Search Warrants Act 1985* and sections 357EA and 578D of the *Crimes Act 1900.*

The provisions in this Part regarding **notices to produce** clarify and provide a legislative basis for the practice of obtaining documents held by financial institutions. Search warrants, in this context, are considered a 'blunt instrument': a search warrant may authorise police to search the entire premises for documents held by the financial institution, when only a specific customer's records are sought.

In practice, banks produce the documents sought when presented with a search warrant, rather than have police search through all of their records.

The Bill will allow a police officer who believes on reasonable grounds that an authorised deposit-taking institution holds documents that may be connected with an offence (such as fraud or money laundering) committed by someone else to apply to an authorised officer for a notice to produce the relevant documents.

The Notice to Produce provisions in the Bill do not replace search warrants. The intention of the provision is that police may apply for either a Notice to Produce or a search warrant, depending on the circumstances.

Although the new power imposes a duty on financial institutions to produce particular documents which do not now exist, the change is largely one of process. As the provision will not alter the type of documents that can be obtained (a document, for example, can include a document in electronic format), but merely the process in which the documents are obtained.

Consistent with the existing *Search Warrants Act 1985*, the Bill provides that the penalty for failure to comply with a notice to produce, without reasonable excuse, is the same as the penalty for obstructing or hindering a search warrant.

Crimes Scenes

It is important that the community has confidence that evidence at a crime scene will not be interfered with, contaminated, lost or destroyed.

This Bill takes the opportunity to unequivocally clarify the powers that police currently exercise when establishing and undertaking certain actions at crime scenes.

Part 7 of the Bill outlines when police may establish a crime scene and the powers that may be exercised at a crime scene.

The Bill creates a two-tiered approach for crime scenes. If police are lawfully on the premises and establish a crime scene, certain basic powers to preserve evidence may be exercised in the first 3 hours without a crime scene warrant. The powers that may be exercised in the first 3 hours are aimed primarily at the preservation of evidence and include directing people to leave a crime scene and preventing persons entering a crime scene.

The remaining crime scene powers are investigatory, and search and seizure powers. These powers may generally only be exercised once a crime scene warrant has been obtained. The application procedures for, and safeguards relating to, crime scene warrants are the same as those for a search warrant. The authorised officer may issue a crime scene warrant authorising a police officer to exercise all reasonably necessary crime scene powers at, or in relation to, a specified crime scene. Police may, however, exercise **any** of the crime scene powers in the first 3 hours (that is, without a warrant) if the officer or another officer applies for a crime scene warrant AND the officer suspects on reasonable grounds that it is necessary to immediately exercise the power to preserve evidence.

The exception to the requirement for a warrant before the exercise of certain powers is vital. For example, police may need to immediately take a photograph if a crime scene is being flooded, or gain access to a room that is on fire and which police suspect contains evidence of an offence. In these circumstances, waiting for a crime scene warrant to be issued would not be practicable, as the evidence would be destroyed.

The Bill provides for a number of safeguards for the use of crime scene powers, such as providing time limits on the establishment of a crime scene and specified powers available to use at a crime scene.

The Bill does not interfere with the ability to establish a crime scene in a public place.

The Bill does not prevent an officer from exercising a crime scene power or doing any other thing if the occupier consents. Nor does the Bill provide police with a new power of entry. Police will only be able to exercise crime scene powers if they are already lawfully on premises or have been granted a crime scene warrant.

The range of offences for which crime scenes may be established is limited to serious indictable offences and where there is an offence committed in connection with a traffic accident causing death or serious injury to a person.

The officer must be of the opinion that it is reasonably necessary to establish a crime scene to preserve or search for or gather evidence of such offences

As with notices to produce, these powers are not intended to detract from the search warrants powers. Consistent with the existing *Search Warrants Act 1985*, the Bill provides a penalty for obstructing or hindering a police officer exercising crime scene powers, without reasonable excuse.

Powers relating to arrest

Part 8 of the Bill substantially re-enacts arrest provisions of the *Crimes Act 1900* and codifies the common law.

The provisions of Part 8 reflect that arrest is a measure that is to be exercised only when necessary. An arrest should only be used as a last resort as it is the strongest measure that may be taken to secure an accused person's attendance at Court.

Clause 99, for example, clarifies that a police officer should not make an arrest unless it achieves the specified purposes, such as preventing the continuance of the offence. Failure to comply with this clause would not, of itself, invalidate the charge.

Clauses 107 and 108 make it clear that nothing in the Part affects the power of a police officer to exercise the discretion to commence proceedings for an offence other than by arresting the person, for example, by way of caution, or summons, or another alternative to arrest. Arrest is a measure of last resort.

The Part clarifies that police have the power to discontinue arrest at any time.

The application of the **safeguards** contained in Part 15 of the Bill represents a codification of the common law requirement that a person must be told of the real reason for their arrest, and a clarification of the additional requirements that an officer must provide their name, place of duty and a warning.

Powers to give directions

Part 14 repeals and re-enacts without amendment legislative provisions in relation to police powers to give reasonable directions. It is intended that under **clause 197**, which sets out the powers of police officers to give directions in public places, that a police officer may be "a person affected by the relevant conduct" for the purposes of issuing a direction.

Property in police custody

While substantively re-enacting the relevant provisions of the *Criminal Procedure Act 1986* and the *Police Service Regulation 1990,* the Bill makes a number of minor amendments to address concerns raised by operational police concerning the disposal of property lawfully in police custody.

Overarching safeguards

Part 15 of the Bill incorporates generic safeguards applicable to the majority of powers exercisable under the Act.

When, for example, police exercise powers of entry, search and arrest, police must, before exercising the power:

- provide the person subject to the exercise of the power with evidence that the officer is a

police officer, his or her name and place of duty,

- provide the reason for the exercise of the power and
- warn that failure or refusal to comply with a request of the police officer in the exercise of the power may be an offence.

The Bill recognises, however that police may not always reasonably be able to comply with these safeguards prior to using their powers, such as in an emergency situation. Accordingly the clause requires in such circumstances, that the safeguards should be exercised as soon as reasonably practicable after the power has been exercised. Even in emergency situations, however, police should strive to comply with all safeguards set out in the Bill.

The existing law has been preserved in the case of a power

to request disclosure of identity,

to give a direction or

to request a person to produce a dangerous implement,

where these requirements must be met before the power is exercised.

Review

The Bill provides that the Ombudsman will monitor for two years from the commencement of the proposed Act the newly enacted provisions of the Bill, including the personal search provisions, the safeguards, crime scenes, notices to produce and other minor changes to police powers.

The Attorney General and myself will undertake a review of the proposed Act three years after its assent.

Conclusion

With power comes responsibility. This Bill represents ideals of transparency, accountability, and legitimacy.

This Parliament, as representatives of the community, and the Courts have over time given Police certain powers required to fulfil their role in law enforcement effectively. In return for these powers, however, police are required to exercise them responsibly, particularly where these powers affect the civil liberties of members of the community whom police serve.

The *Law Enforcement (Powers and Responsibilities) Bill 2002* balances these two ideals admirably.

I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.44 p.m.]: The Opposition does not oppose the Law Enforcement (Powers and Responsibilities) Bill. However, I reiterate that, as was indicated during debate on the bill in the Legislative Assembly, the Opposition has concerns about police officers' practical application of the bill. The Opposition's concerns were clearly outlined by the shadow Minister for Police, who, in a few months' time, will be the New South Wales Minister for Police. The shadow Minister represented many rank and file police officers in expressing his concerns about the practical implications of the legislation on them.

The objects of the bill are to consolidate, restate and clarify the law relating to police and other law enforcement officers' powers and responsibilities; set out the safeguards applicable in respect of persons being investigated for offences; and make provision for other police powers, including

powers relating to crime scenes, production of bank documents and other matters. The Royal Commission into the New South Wales Police Service envisaged a consolidation of the powers of police and law enforcement officers. The objective of this consolidation is to provide for effective, efficient law enforcement and protect individual rights. The intent of the bill is to simplify current legislation.

Currently police powers are found in many different Acts; it is therefore desirable to incorporate them into one piece of legislation. The Opposition supports the general thrust of the bill. However, when we endeavoured to amend the bill in the Legislative Assembly, all Government members voted against each and every Opposition amendment, which, I reiterate, were put forward to assist police officers. The Opposition's amendments came about as a result of discussions with rank and file police officers.

The Coalition in the other place proposed a number of amendments to the bill, and the Government opposed each of those amendments. The Coalition believes that one police warning is sufficient. We sought to remove the double-barrelled warning requirement with respect to the police power to search for knives. Each and every member of the Government voted against this sensible amendment. The Coalition also sought to provide police with powers to search vessels and aircraft that contain a person believed to be in possession of a prohibited plant or prohibited drug—powers similar to the police powers in respect of motor vehicles—except when there is no correlation between a vessel and an aircraft or a motor vehicle, and put those powers on an equal footing. Again, the Government was not prepared to accept this very sensible amendment.

The Coalition was also concerned that the bill did not provide police with the power to arrest when there is a reasonable suspicion that an indictable offence is about to be committed. This amendment was put forward to clarify the difficulties posed by legislation with respect to the commission of an indictable offence. However, the Government was not prepared to support the amendment. I am sure that down the track it will be shown that the Opposition was right in the position it took.

The Coalition takes the view that because police officers need the power to arrest without warrant, an appropriate provision needs to be included in the bill. Yet again, the Government members voted against the Opposition's proposals. Fundamentally, the Opposition disagrees with the Government's view that police problems will be solved by the issuing of penalty notices for serious offences under the Crimes Act. We believe that the Government must put in place a better system of police powers of arrest in relation to different classes of offences. As a person with some knowledge of how the system works, I believe that the issuing of infringement notices for serious offences, particularly section 61 assaults and motor vehicle theft, is an absolute disgrace and the provision should be withdrawn.

The Hon. RICHARD JONES [2.48 p.m.]: The Law Enforcement (Powers and Responsibilities) Bill repeals and re-enacts provisions contained in various Acts. It sets out the powers of police to enter premises, require identity to be disclosed, search and seize with and without a warrant, arrest, investigate and question, detect for drugs using dogs and medical imaging, and give directions to persons in public places. Some provisions of the bill expand existing powers, change existing laws, create new powers and create new offences. Clearly, it is important legislation. I have concerns in relation to a number of provisions, which I will outline shortly, and I intend to move amendments in Committee to address them. Proposed section 26 (3) refers to police officers' powers to search for knives and other dangerous implements. It reads:

> … the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody.

This provision is problematic. The fact that a location has a high incidence of violent crime is irrelevant. The New South Wales Ombudsman's report entitled "Policing Public Safety" recommended that the incidence of violent crime in an area should be taken into consideration only in combination with other factors. The bill expresses this in vague terms and invites stereotypical

suspicions. That provision should be removed. The Police Association has argued that such terms lack certainty and clarity. Officers will be left open to criticism for the misuse of the provision. The Ombudsman's report notes that police officers have expressed confusion about the definition of "violent crime". One police officer said:

When you target someone, why are you targeting someone in a high crime area?... If you have three or four Asians sitting together, what's the possibilities? OK, they could be part of a gang, or they could just be four blokes from the North Shore come down to have a couple of games in Timezone. All of a sudden you're turning them over saying they're Asians, they're in a high crime area. We're searching for knives.

Police officers are also uncertain about the extent to which the crime hot spots provision can be relied upon to form the basis of a search. They expressed concern that the phrase "area with a high incidence of violent crime" was being interpreted too broadly. As the Ombudsman's report suggests, there is some confusion about the extent to which the provision can be relied upon, what determines and defines a location with a high incidence of violent crime, and what powers can be used with it is an element. Accordingly, to ensure that the hot spots provision does not result in the inappropriate use of the search power, it may be better to require NSW Police to define those locations with a high incidence of violent crime that it assesses as warranting special application of the powers. This would assist in the consistent application of the powers and would clearly define those areas in which location can be taken into account in determining whether to search a person.

I am also concerned about the provisions that relate to the new regime of three-tiered searches: frisk, ordinary and strip searches. With regard to strip searches, provision must be included that provide for safeguards that are included in the comparable consolidated legislation such as the Commonwealth Crimes Act 1914. For example, section 3ZH of that Act provides that a strip search may be conducted if an officer of the rank of superintendent or higher has approved the conduct of the search and a person who gives or who refuses to give an approval must make a record of the decision and the reasons for the decision. Neither of these provisions has been contained within the New South Wales bill, and they should be. In addition, privacy provisions should be strengthened in relation to all searches. Searches must simply not be conducted in the presence or view of a person whose presence is not necessary for the search. Also a parent, guardian or personal representative of the person searched may, if reasonably practicable in the circumstances, be present during the search.

I understand that it may not be reasonably practicable to have another person present in all circumstances, but it is important that the provisions are strengthened to enable another person—such as a parent—to be present. That is particularly important in relation to children and persons with impaired intellectual functioning. It is absolutely essential that strip searches conducted on children and people with impaired intellectual functioning are provided for in their own section of the legislation. Children and intellectually impaired people are amongst the most vulnerable in our society and thus must be afforded special consideration. In relation to the rules for conduct of strip searches of children and persons of impaired intellectual functioning, the bill provides that the search must "as far as it is reasonably practicable in the circumstances" be conducted in the presence of a parent or guardian of the person being searched. It is simply not good enough to insert into both provisions "as far as it is reasonably practicable". Quite clearly, as far as possible we should avoid the situation where children or persons with impaired intellectual functioning would be strip searched without a parent, guardian or other person representing their interests present. The failure to do so would be a travesty of justice.

I intend to move an amendment in Committee to provide that a parent, guardian or other person must "unless there is no other alternative in the circumstances" be present. The amendment strengthens the existing provision without making it unworkable. It is anticipated that in some circumstances—for example, if the person is 17 years old, almost an adult—having a parent, guardian or other person present may not be workable or even desirable for the person being searched. We do not want to make the provision mandatory, otherwise it may work against the person being searched. Therefore, the provision that another person must be present unless there is no other alternative and that is acceptable to the person is a reasonable and important measure.

The bill creates significant new laws with regard to crime scenes. The new powers are modelled on provisions contained in the Queensland Police Powers and Responsibilities Act 2000. However, the various safeguards that are afforded in the Queensland legislation have not been reproduced in this bill. For example, the Queensland Act provides, in relation to an officer's powers to enter the crime scene, investigate, open anything, remove anything, that:

> … if it is necessary to do anything at the place that may cause structural damage to a building, the thing must not be done unless a Supreme Court judge issues a crime scene warrant for the place before the thing is done and the warrant authorises the doing of the thing.

The bill should be amended to include a similar provision. In addition, the officer must exercise those powers in a way that causes the least amount of damage to property. I am not saying that an officer would wish to cause more damage than is necessary; I am merely stating that the restriction to cause "the least amount of damage as possible" should be more important than time, financial circumstances, resources or any other constraints. Proposed section 100 relates to powers of arrest. However, it is inadequate and should be amended to reflect current practice. The bill requires persons conducting a citizen's arrest to take the arrested person before an authorised officer—being a magistrate, clerk of the court or authorised Attorney General's Department officer. In reality, citizens making arrests call the police or another appropriate authority and deliver the arrested person into police custody.

Proposed section 119 provides that when applying for a detention warrant a person may make an application in person. However, there is no requirement that this must be accompanied in writing. Quite clearly, it is important that if an officer makes an application in person it is accompanied with something in writing—just as the warrant provisions outlined in proposed section 60 require written advice. I will move an amendment in Committee to make clear that these provisions will also apply in relation to detention warrants. Another important aspect of this legislation is the power of a medical practitioner, acting at the request of an officer, to examine persons in custody.

The provisions that are included in this bill should be in accordance with what is provided for in the New South Wales Crimes Act 1900. The Act states that a legally qualified medical practitioner may make such an examination of the person so in custody "as is reasonable in order to ascertain the fact which may afford such evidence". Clearly, the bill should be amended to include a provision that an examination must be limited to what is reasonable for the purposes of the examination. In addition, a medical examination should take place only if there are reasonable grounds for believing that an examination of the person will provide evidence. I repeat: it says "will" provide evidence, not "may" provide evidence. The Crimes Act 1900 provides:

> When a person is in lawful custody upon a charge of committing any crime or offence which is of such a nature and is alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his or her person will afford evidence as to the commission of the crime or offence, any legally qualified medical practitioner acting at the request of any officer of police of or above the rank of sergeant, and any person acting in good faith in his or her aid and under his or her direction, may make such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence.

The provisions contained in this bill should reflect the current provisions. Therefore, the wording of proposed section 138 should be changed from "may" to "will". Part 11 deals with drug detection powers. Regulation-making powers with respect to record keeping, particularly as they relate to drug detection powers, should be preserved. It should be a requirement that police keep records of the results of all drug dog searches conducted—whether or not pursuant to warrant—including where the dog has alerted and no prohibited drugs or plants have been found in possession or control of the person; the outcome—warning, caution or prosecution—for any person found with prohibited drugs or plants in their possession or control; and the cost of general drug detection operations using dogs—whether or not pursuant to warrant—by reference to the number of police, dogs and other resources deployed, events of operation, et cetera.

The Police Powers (Drug Detection Dogs) Act 2001 provides that the Governor may make

regulations "for or with respect to the keeping of records relating to the exercise of powers conferred on police officers by this Act". Clearly, similar and tighter provisions are necessary in this instance. Under this bill police are given the power, under proposed section 189 (3), to take action to prohibit a person from driving. This provision is not included in section 30 of the Road Transport (Safety and Traffic Management) Act. The proposed section allows the police officer to act to require a driver to hand over keys or for police to immobilise a vehicle before breath-testing a person if the officer reasonably suspects the person is likely to abscond. For example, a police officer could reach in and grab someone's keys. Given that the police officer must reasonably suspect that the driver is going to drive off, this would be a rather dangerous thing for a police officer to do. Certainly this type of thing should not be encouraged.

The draft exposure of this bill provided, pursuant to the Queensland Act, that nothing in the legislation affects the right of a person to refuse to answer questions unless required to do so under an Act. However, the bill now makes no such provision. This is an essential safeguard relating to powers that must be included. In addition, provisions in part 17 relating to property in police custody expand the current statutory provisions by incorporating various parts of the Queensland Act. However, a number of accompanying safeguards have been omitted. In particular, the Queensland Act provides that when a item is seized a receipt should be left or given and, upon request, a police officer should provide certified copies of documents seized from the person entitled to possess that document. Such provisions must be included in the bill, and I shall move amendments in Committee to this effect. The New South Wales Ombudsman's report entitled "Police in Public Safety" recommended that police should be provided with guidance by way of regulated codes of practice in their use of reasonable directions powers.

The report noted that the records of incidents of reasonable directions in New South Wales from July 1998 to June 1999 showed a steep increase in the reported use of the reasonable directions powers. A high number of teenagers and a high proportion of people from indigenous backgrounds were given directions. Police are given a broad discretion as to the kinds of directions they may lawfully give. The report noted that by far the most common direction reported was a direction to move on, with no further detail. It was noted that the breadth of the power had been somewhat obscured by the tendency to refer to the power as simply the move-on power. The Ombudsman recommended that the police use their discretion to tailor directions to solving the particular problem at hand. He recommended that the legislation be reinforced in future police training because of the narrow emphasis that has been placed on directions to move on and confusion as to the scope of the power expressed by police in focus groups and interviews conducted during their review. The bill must be amended to provide that the commissioner must issue instructions and guidelines in relation to these move-on powers.

Proposed section 238 allows for regulations to create offences punishable by penalty. While this provision is consistent with provisions in other legislation, the penalties provided exceed what is necessary—they are too high. In fact, many legal organisations, such as the Law Society of New South Wales, have argued that all offences should be contained in the Act and none should be prescribed by way of regulation. However, in anticipation of the need for flexibility I do not propose to do this; rather, I intend to provide that the maximum penalty units be reduced from 20 to 10 and 50 to 25 respectively. Monitoring of this important legislation by the Ombudsman is essential. Proposed section 242 provides that only parts of the bill shall be scrutinised. This is unacceptable. Part 4—the search and seizure powers without warrant—should be included in the Ombudsman's review, given that the new safeguards apply across the entire part, not just to division 2 and division 4.

Similarly, part 11, which relates to drug detection powers, contains provisions that were included in the Police Powers (Drug Detection Dogs) Act, the Police Powers (Drug Premises) Act and the Police Powers (Internally Concealed Drugs) Act. These Acts specifically provide for scrutiny of the exercise of powers by the Ombudsman and an obligation to report. The same provisions must be included in this legislation. The Minister's briefing note on the bill noted that the Ombudsman will monitor the newly enacted provisions of the bill. I would argue that the aforementioned Acts constitute newly enacted provisions as they came into force only late last year. The concerns I have outlined are serious and I will move amendments in Committee to address them.

The Hon. HELEN SHAM-HO [3.03 p.m.]: The long title of the Law Enforcement (Powers and Responsibilities) Bill is:

> A Bill for an Act to consolidate and restate the law relating to police and other law enforcement officers' powers and responsibilities; to set out the safeguards applicable in respect of persons being investigated for offences; to repeal certain Acts and consequently amend other Acts; and for other purposes.

The draft bill was released for comment on 8 June 2001. According to the Law Society of New South Wales, this bill is a considerable improvement on the draft bill, and I agree with that view. I am sure all honourable members would agree that the consolidation of statute law and common law relating to police powers is an important and symbolic step for New South Wales. For some years there have been calls for this to occur, the most significant being the Wood Royal Commission into the New South Wales Police Service in May 1997. As the Attorney General stated in his second reading speech, the royal commission proposed a consolidation of laws relating to police powers in order to reach a balance between effective law enforcement and the protection of individual rights. I agree with the statement that the bill will simplify the law in relation to police powers and responsibility. It does so by bringing under one piece of legislation the most commonly used police law enforcement powers, including powers of entry, search and seizure powers, powers relating to arrest, and drug detection powers.

This significant improvement is to be commended because it enables the law to be more accessible to the public. Having studied and practised law, I am only too aware of the obstacles that prevent the community in general from accessing, let alone understanding, the law in all its complexity and technicality. However, I note that the bill is not totally comprehensive. Other police powers—such as to carry out forensic procedures, and to conduct controlled operations and surveillance—will generally remain under separate Acts. Previously, I have spoken in the House on the Police Powers (Drug Detection Dogs) Bill 2001 and the Police Powers (Drug Premises) Bill 2001, which was cognate to the Police Powers (Internally Concealed Drugs) Bill 2001. Honourable members will recall that the Police Powers (Drug Premises) Act and the Police Powers (Internally Concealed Drugs) Act were introduced by the Carr Government in response to the problems exposed by the Cabramatta policing inquiry early last year. In particular, the Police Powers (Drug Premises) Act was introduced to close the drug houses that were prolific in 1999 at Cabramatta.

In March 2001 the Premier announced in a ministerial statement in the other place a three-step package of reforms at Cabramatta designed to combat drug and crime problems in the suburb. The Police Powers (Drug Premises) Act and the Police Powers (Internally Concealed Drugs) Act have been a major part of this package and have comprised the criminal justice strategy to be undertaken by the Government. According to the Government's progress report on Cabramatta policing, released by the Premier in April, since the drug house law came into effect in July 2001 15 drug houses have been shut down. Also, Cabramatta police have issued 2,487 directions under the new move-on powers, which commenced on 1 July.

As chair of the Cabramatta policing inquiry, I am pleased that the Government has taken decisive action in Cabramatta and has implemented many of the committee's recommendations. However, there is still a long way to go in Cabramatta. A most disturbing sign that things are going backwards in Cabramatta relates to trust and communication problems between front-line police and management at the Cabramatta Local Area Command [LAC]. I have been approached by Mr Peter Starr from the Cabramatta Chamber of Commerce, who has been championing the rights of local front-line police to speak out when there are problems. More than two weeks ago Mr Starr delivered several questions to my office and a letter signed by him on behalf of a number of front-line police at Cabramatta. I placed eight of those questions on notice and two weeks ago I asked one question without notice. Each relates to the Cabramatta Local Area Command. I hope that the Minister for Police will respond to those questions as soon as possible. I shall quote selective parts of the letter that I believe sum up the concerns of officers who deal with drug crime at Cabramatta. The letter stated:

> We have had to live and work in an environment where we saw our courageous, honest and hardworking colleagues of the past suffer and be subjected to the harshest forms of vilification and persecution because they dared to raise their concerns and speak openly and honestly about what was taking place in the Cabramatta Police Station and the Cabramatta Community …
>
> We will continue to fight from within to expose the lies and deceit that is being waged upon this community by the current management regime at the Cabramatta LAC …
>
> We can no longer close our eyes and remain silent to the blatant politicisation of the management at the Cabramatta LAC … Our only desire is to make Cabramatta a safe and better place for the community which we serve.

In my opinion this letter, which is lengthy, is disturbing evidence that the problems with management still exist, despite the changes instituted since the Cabramatta policing inquiry. The Government, to its credit, has tried hard to combat the problems. I turn to the substantial issues in the bill. In particular, I will focus on the issue of safeguards. On this matter, as Justice Michael Kirby of the High Court has been quoted as saying, it is a question of the balance which "our society is prepared to strike between its need for effective law enforcement and the protection of individual rights".

Last year when I spoke on three bills relating to police powers I raised the issue of appropriate safeguards for civil liberties, given that each of the bills increased police powers quite extensively. At the time the Law Society and the New South Wales Council for Civil Liberties were worried about the encroachment of police powers on the rights of individuals. As a lawyer I am only too aware of the conflict between the rights of individuals and the enforcement of laws. When it comes to personal searches, the balance between these two opposite aims can become very contentious. This is because personal searches can be seen as intrusive and invasive, denying privacy for the person being searched.

Personal searches can be embarrassing and shameful for the person being searched, particularly if they are not undertaken with sensitivity and understanding. For many people, police officers in uniform are intimidating, and to be forced to be searched by a police officer can be a frightening experience, especially if the person being searched is from a different cultural or linguistic background. Yet, on the other hand, these searches allow police to fight crime effectively and to protect the community. I believe that searches undertaken in an appropriate manner, with the necessary safeguards, are not an invasion of civil liberties but should be seen as an important crime-fighting tool.

The bill reflects this argument. It sets out three new categories of personal searches: frisk search, ordinary search and strip search. These are based on the Commonwealth Crimes Act 1914, and in doing so it also provides crucial safeguards. In my view this bill attempts to achieve the delicate balance to which Justice Michael Kirby referred. It provides safeguards to individuals being searched. For example, clause 32 deals with the preservation of privacy and dignity during searches. This ensures that the person being searched is informed of whether clothing will need to be removed and why it is necessary to remove the clothing. The police officer must undertake the search in a way that gives reasonable privacy, and it must be done as quickly as is reasonably practicable.

Clause 33 provides rules for the conduct of strip searches. It provides that a parent, guardian or personal representative of the person may be present during the search. Importantly, it also provides the safeguard that a strip search of a child who is at least 10 years old but under 18 years of age or of a person who has impaired intellectual function must be conducted in the presence of a parent or guardian unless not reasonably practicable in the circumstances. While I approve of these safeguards, I agree with the Law Society that clause 33 should apply to all personal searches, not just strip searches. This would provide stronger safeguards to ensure that young people or people with impaired intellectual function are not vulnerable when a frisk or ordinary search takes place.

The Law Society believes that strip searches will be carried out only on a person who has been arrested. This is to provide yet another safeguard for the rights of the individual, and I have no problem supporting it. The Law Society further recommends that section 3ZH of the Commonwealth Crimes Act 1914 be included in clause 33 of the bill. Section 3ZH sets out the power to conduct an ordinary search or a strip search. I agree with the Law Society that these provisions would ensure further safeguards for strip searches. A strip search would have to be approved by a police officer of the rank of superintendent or higher, and reasons would need to be given for approval or refusal for the search to take place. This seems to be a sensible addition to the safeguards already provided in the bill. The Hon. Richard Jones will move an amendment to that effect, and I will support the amendment.

I turn to accountability. This bill provides for monitoring by the Ombudsman of the operation of certain parts of it. However, these provisions only cover searches of persons on arrest or while in custody in part 4, notices to produce documents in part 5 and crime scenes in part 7. I do not understand why the Ombudsman's monitoring cannot be extended to the whole of the search and seizure powers without warrant in part 4, the drug detection powers in part 11, the safeguards in part 15 and property in police custody in part 17. Again, the Hon. Richard Jones will move an amendment to that effect, and I will support the amendment. I hope that the Government and the Opposition will agree to the amendments as the Ombudsman's monitoring role is important as an accountability mechanism. I commend the bill to the House.

Ms LEE RHIANNON [3.15 p.m.]: This bill restates and consolidates the laws relating to the powers and responsibilities of the police and law enforcement officials. In some areas it codifies the existing common law, and in other areas it restates, with a few changes, the relevant provisions of other Acts, including the Crimes Act. Given the Greens considerable and well-documented concerns about certain powers given to police in New South Wales and the frequently unjustified increases in those powers that the Government has enacted, my colleague Ian Cohen and I have problems with many aspects of this bill. For example, the broad move-on powers that have been given to police are abusive, unnecessary and used often to harass Aboriginal people.

Labor's law and order agenda has failed to make New South Wales a safer place, it has failed to address issues of police corruption, and it has certainly failed to protect the rights of ordinary people. Ian Cohen will move a number of Greens amendments in Committee that cover a range of concerns about the powers given to law enforcement officials in New South Wales. We are concerned about proposed section 26 (3), which allows police to take into account the fact that a person is present in a location with a high incidence of violent crime in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody. This is commonly known as a hot spot provision, and the Greens have consistently opposed such provisions.

During the review conducted by the Ombudsman, significant problems with this particular provision were identified, even by the police. It is vague and confusing, and gives police far too much discretion. The incidence of violent crime in a particular location is a separate question to the criminality of any given individual. How are police supposed to determine how much violent crime is enough to trigger this provision? The provision results in discriminatory policing, with individuals targeted in an unfair manner. It also gives police far too much discretion, which was identified by the Wood royal commission as a key factor in corruption, and the Greens are opposed to it remaining in the bill in its current form.

When one sees that provision one must reflect on how much the recommendations of the Wood royal commission have slipped in New South Wales. We are concerned about proposed section 26 (2), which gives police the power to search school lockers and any bags that are found in lockers. We believe that this section does not contain sufficient safeguards. Police should have to advise a student of the grounds for a belief that a dangerous knife or weapon is in the locker, the student should be present during the search, and the student should not be required to expose the contents of the locker in front of other students or teachers.

Similarly, the Greens are concerned that there are insufficient safeguards in the bill relating to

the strip searching of children aged between 10 and 18 years and persons suffering incapacity. Children should only be searched in the most exceptional circumstances. That is not provided for in the bill. The only safeguard for such people is that the search must be conducted in the presence of a parent, a guardian or similar person. That is simply not good enough. It is not tight enough and does not provide the necessary safeguards. Additional safeguards are required, such as the requirement that the person has been arrested and charged with an offence or that the search has been ordered by a magistrate. It is ironic that the Crimes (Forensic Procedures) Act contains far more safeguards, despite the fact that forensic sampling is less intrusive than strip searching. The law must make a point of protecting the rights of children and those suffering incapacity, because they are not in a position to protect themselves.

We are concerned also that the definition of domestic violence in part 6 of the bill is too narrow. Proposed section 81 fails to include the situation in which a child, who is not a permanent resident of a dwelling but who is visiting, is a victim of domestic violence. In split families, such a scenario is quite common. The scope of domestic violence in the bill needs to be broadened to include that situation. We are also concerned that the crime scene powers contained in proposed section 95 (1) (a) to (d) do not make adequate provision for unaccompanied children. Where police direct an unaccompanied child to leave or not enter a crime scene where the child lives, the police should be obligated to ensure that the child has a safe place to go to and should assist the child to get to that safe place. We cannot assume that that will happen. As has often been said to us, the provision needs to be put in place.

The Greens believe this bill sets unreasonable maximum detention periods for certain categories of people. For vulnerable people, such as children, Aboriginal people, non-English-speaking people and the mentally ill, the Greens believe it is reasonable for the maximum investigation period to be two hours with an extension to a maximum of four hours if a detention warrant is required. This would be half the maximum period of detention that the bill currently stipulates. These vulnerable categories of people are at greater risk of being intimidated into making false confessions if detained for long periods. The law should protect their rights. It is our duty to ensure we get it right.

The Greens believe that when applying to an authorised justice for a detention warrant the police should be required to include in the application important details regarding the detainee in order to give the authorised justice an informed basis upon which to make a decision. Factors such as age, the total length of time the detainee has been held since arrest and the detainee's physical and mental condition should be fully taken into account. Otherwise, the authorised justice, with the best of intentions, is incapable of coming to a fully informed decision. The Greens strongly oppose proposed section 197 (1) (c). We are opposed to this broad move-on power, as we always have been. The recent view of the Ombudsman confirms our concerns, and those of so many others, that this power would be used primarily against young people, indigenous people and the homeless. This shameful provision should not be included in the bill.

Use of this provision effectively amounts to police harassment of categories of people who are generally doing no harm and who are intending no harm but who may not engage in what many in this Chamber—and probably many in society—regard as so-called normal behaviour. It is a discretionary power that is wide open to abuse, is being abused and will continue to be abused as long as it remains on the books. The Ombudsman found that the use of this power is geographically concentrated, and in country areas it is clearly being used in a systematic way against Aboriginal people. It is extraordinary that in 2002 we are keeping this provision on the books. It is a discriminatory provision that is wide open to abuse and we are strongly opposed to it remaining in the bill.

The Greens have a number of other concerns about the bill that my colleague Ian Cohen will address in detail during the Committee stage. The Government has embarked on an eight-year program of expanding police powers, and it has done that without justification. It has no evidence to justify this expansion of powers. In the process, many important civil rights are being eroded, just as gains won by many in our society working against police corruption and the arbitrary and discriminatory use of police powers are being eroded. We congratulate those people because often they work in difficult circumstances, they are under-resourced and find it difficult to get anyone to

listen to their concerns. It is only through their persistence that we will eventually get the changes that must come.

Many of these powers are highly discretionary and open to abuse. As such, they run contrary to the spirit, if not the letter, of the Wood royal commission. Many improvements won by that royal commission have been lost. For almost eight years the Greens have questioned Labor's law and order agenda. We have articulated principled positions that seek to make our communities safer, to reduce police corruption and to protect the rights of ordinary people. We will continue to do so for as long as Labor and the Coalition continue to pursue their dangerous and futile law and order obsession.

Reverend the Hon. FRED NILE [3.27 p.m.]: The Christian Democratic Party supports the Law Enforcement (Powers and Responsibilities) Bill, which will consolidate, restate and clarify statutory and common law relating to police and other law enforcement officers' powers and responsibilities. It provides for safeguards for those being investigated for offences. As some honourable members may know, our party drew up a police authority bill, the aim of which was to restore the authority of police in New South Wales, which, through successive laws, has been undermined and weakened. Confusion has been created in the minds of police, as they have become uncertain about what they could do, and when one is not sure, one does not do anything.

Police officers have said to me that they would only react to a crime warning; they would not take any preventative action for fear they broke a law or got into trouble with the Ombudsman. During their 12-hour shifts they simply respond to calls as they come in—for example, domestic violence or perhaps a robbery. There is no effort by the majority of police to try to prevent crime—to question a person who is seen acting suspiciously—because they would be in trouble with their superiors or put before the Ombudsman for harassment. The nerve of police in New South Wales has been cut. Police officers no longer act as they did in the past. I acknowledge that on some occasions police in the past went overboard and got carried away with their authority, but the majority of police carried out their responsibilities carefully and according to the law. But once they reach that grey area where they no longer know what to do, in order to avoid sitting outside the office of the Ombudsman or a senior officer, they do nothing but react to orders to investigate specific matters.

We are pleased that the bill has been introduced. It relates back to the Royal Commission into the New South Wales Police Service, which recommended a consolidation of police powers. The bill brings together the powers contained in six Acts: the Intoxicated Persons Act 1979, the Police Powers (Drug Detection Dogs) Act 2001, the Police Powers (Drug Premises) Act 2001, the Police Powers (Internally Concealed Drugs) Act 2001, the Police Powers (Vehicles) Act 1998 and the Search Warrants Act 1985. Some members speak as if the police have been given draconian powers, but it is a matter of consolidating into one bill existing powers in six Acts of Parliament. I will monitor the operation of this bill with the police officers I know and the Police Association, with which we work closely. The Government wishes to encourage the police to carry out their duties, and I believe this bill has the full support of the Police Association. But often in practice a different interpretation is put on a part of the legislation. We will monitor it to make certain that this does not occur.

We have always said that police should have the power to demand the name and address of people they stop. I have never understood why that was a grey area and people have not had to provide their names and addresses. If we want police to combat crime and prevent the abuse of children or teenagers at risk on the street, they must have those powers. It is only to assist the individual they are questioning and, in the long run, perhaps to prevent harm to other citizens. The bill will pick up all those powers to stop, detain and search. The powers of police in relation to locating drugs carried by dealers are maintained, and rightly so. Dealers are very clever and usually have a stack hidden away somewhere in Kings Cross, Cabramatta or Bankstown. They keep going back to that as they sell the small quantities of drugs they carry on their person. Sometimes the drugs are carried in their mouth, and this makes it very difficult for police to get evidence that the person is a drug dealer and not simply a drug user.

The bill also deals with police powers relating to regulation of vehicles and traffic—a very important area. I urge the Government to consider clarifying the position so that when police are conducting random breath tests and they have a suspicion about a particular person, they can go further than merely asking for the production of a driver's licence and require the production of registration papers and other documents. As far as I know that is not normally done; I have never heard of that being done. I gather from comments made when I raise this issue that there is some doubt about whether police have the power to act in that way under the random breath-testing legislation. There have been reports of bodies being found in boots of motor vehicles that have been stopped for the purposes of random breath-testing. Police may not have any idea that there is a body in the boot, but police sometimes have a sixth sense. For instance, the person stopped may be perspiring and agitated. In such cases police may find a person in the boot of the car who has been kidnapped and who is still alive, thus saving the life of the person.

We also support the police powers that relate to personal searches for dangerous implements, including guns. The liability of police officers exercising search warrants needs to be sorted out. A number of very clever lawyers can exploit the present situation. The best at this is John Marsden, who always seems to be able to find an error in a search warrant. The error may be only minute, but a finicky judge will reject the search warrant and, as a consequence, disallow the evidence gathered under the search warrant, thus blowing the whole police case out of the water. That happened in the very important Burrell case in which two women—a Mrs Whelan and a Mrs Davis—seem to have disappeared off the face of the earth and Mr Burrell has been charged with their murders.

There was a dilemma in the court case. The police identified and located what clearly appeared to be diagrams on notepaper of the plan to kidnap Mrs Whelan and another plan with points on how to conduct the ransom proceedings, the amount of money and so on. But because the police warrant had not specified, I gather, "notepaper"—it referred to "other things" or "other material"—the judge ruled that the evidence could not be used in the case and it was removed from the prosecution case. Yet it is essential to the case. A plan of the kidnapping and a plan of the ransom proceedings would virtually convict Mr Burrell. The charges are going ahead.

At question time I have asked the Government to request the court to review the decision. Hopefully, that evidence will be allowable in the new case proceeding against Mr Burrell. If it is not, it will be very difficult to get a conviction. I hope there is some way in which search warrants are regarded as a human activity, as it were. A minor technical error should not invalidate a search warrant or the material found as a result of it. It is most important that provisions in this regard be strengthened. I hope that the bill will bring that about. We are pleased to support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.36 p.m.]: Not working in the legal profession, it is difficult for me to get an overall view of police culture. When we legislate on a very big picture it would be useful to have some idea of day-to-day concepts. Apart from the odd parking fine or speed camera infringement, one has very little to do with the police if one is not in legal practice. A huge part of police work is a result of the criminalisation of drugs, with ever-increasing powers being introduced towards that end. I believe that strategy is fundamentally wrong. The criminalisation of drug use and the obsession of the Government with a policing approach to drugs affects the conduct of policing, the priorities of policing and the norms of policing in a destructive way. As a result of this cultural difference, the police function becomes increasingly adversarial and less reflective of community attitudes. Now that we have this foolish and belligerent foreign policy that is leading to fears of terrorism, civil liberties are being threatened. People are so scared of terrorism they give up civil liberties. Consequently, one asks the practitioners in this area—the Law Society and others—for advice. The Government, ever-optimistic, in its briefing notes on the bill stated:

Main purpose of the proposal

-To consolidate, restate and clarify the law (statutory and common law) relating to police and other law enforcement officers' powers and responsibilities; and

-To set out the safeguards applicable in respect of persons being investigated for offences.

...

In its Final Report, the Royal Commission into the NSW Police Service recommended the legislative consolidation of police powers. The Law Enforcement (Powers and Responsibilities) Bill 2002 reflects the consolidation process envisaged by the Royal Commission.

The draft Bill was released for public consultation in mid-2001.

I expressed concern about defining the powers of search. I note the establishment of a new regime of three-tier searches: frisk search, ordinary search and strip search. Apparently safeguards have been established to apply to all personal searches and the regime has been introduced without reducing or increasing police powers. In speaking to the crossbench, the Government said that the bill provides clarification and routine and that if honourable members support the legislation everything will be fine. However, it bothers me that we have spent an extraordinary amount of time clarifying and generally increasing police powers in response to accused persons getting off lightly because of precedent.

I do not know whether Parliament has historically spent its life obsessed with tightening up police powers. My instinct is that that is not the case and that this obsession with drugs and now terror is leading to a distortion of the way police are used in society and the relationship between police and society. Reverend the Hon. Fred Nile's benign view of the police trying to be good but being tied down by red tape is one interpretation, but the civil libertarians would say that if police do not need to interfere they should not do so. It is a question of exercising goodwill in their operations. Terry Connolly did a great deal of work on restorative justice and had an impact on the operations of police officers. However, he did not get much real support in New South Wales compared to that afforded him in Britain, and that is cause for concern. I consulted the Law Society of New South Wales on this legislation and I received a detailed response, which has had a significant impact on my thinking. I thank Sherida Currie for her work in this regard. The Law Society states:

The exposure draft Law Enforcement (Powers and Responsibilities) Bill 2001 was released for consultation on 6 June 2001. The draft bill was presented as a consolidation and codification of "the majority of widely used law enforcement powers and their accompanying safeguards."

A thorough analysis of the draft by the Law Society's Criminal Law committee and experienced practitioners representing a number of agencies and stakeholders in the criminal justice system revealed that the draft bill was neither simple, clear nor consistent:

- Several current statutes conferring police powers had not been incorporated into the draft bill and, notwithstanding the aim to codify the law, the common law was specifically retained in a number of instances.
    - There were many instances where the draft bill:
    - expanded existing powers;
    - changes the existing law;
    - created new powers; and.
    - created new offences.
- The draft bill also drew on legislation from other jurisdictions as a model but the supporting safeguards deemed necessary by those other jurisdictions had not always been incorporated.

Law Enforcement (Powers and Responsibilities) Bill 2002.

The Law Enforcement (Powers and Responsibilities) Bill 2002 was introduced into the Legislative Assembly and had its Second Reading on Tuesday, 17 September 2002. The Bill is much improved from the draft bill in that:

- Provisions relating to personal searches and safeguards relating to police powers will apply in relation to all searches and situations authorised by the legislation.

- Concerns about extensions of certain powers have been addressed.

- Various other powers have been incorporated, principally powers under the Drug Misuse and Trafficking Act, Police Powers (Drug Premises) Act, Police Powers (Drug Detection Dogs) Act, Police Powers (Internally Concealed Drugs) Act, Intoxicated Persons Act.

OUTSTANDING MATTERS NOT ADDRESSED and SUGGESTIONS FOR FURTHER AMENDMENT

The Law Society recommends the following further amendments and corrections to the Bill:

Omissions:

- The Bill should be amended to include:
  police powers to grant bail,
  requirement to caution in the broad range of circumstances under common law and New South Wales Police Service CRIME code of conduct,
  police powers regarding the conduct of identification parades,
  powers under the Crimes (Forensic Procedures) Act.

The Law Society goes on to refer to:

- Previous clause 149 Right to remain silent … people have the right to defer answering questions pending the obtaining of legal advice.

The Law Society also suggests amendments to part 4, division 4 and the provisions relating generally to personal searches. It is concerned that part 7 creates significant new law. It is modelled on the Queensland Police Powers and Responsibilities Act 2000, but the various safeguards that are provided in the Queensland legislation have not been reproduced in this bill. The Law Society also refers to regulation-making powers with regard to record keeping that should be preserved. It goes on to state that the powers under proposed section 242 relating to the monitoring of operation of certain provisions of the Act by the Ombudsman should be extended. The Law Society believes that part 4, division 3, which relates to additional search and seizure powers in public places and schools, should be deleted. It goes on to express concern about parts 5, 8, 10, 14, 15, 17 and 19.

Many of the Law Society's proposed amendments have been taken up by the Hon. Richard Jones and the Greens. They constitute a detailed raft of amendments. Given that they came from the Law Society, my inclination is to support them. We must have balance with civil liberties. If Parliament does not support these amendments, we will suffer. The Australian Security Intelligence Organisation raids on people in the Dee Why area who offered to co-operate with authorities making inquiries about their discussions at a mosque with an Indonesia Muslim cleric were very worrying. If such action was possible under existing police powers, I wonder whether we should increase them. I am inclined to support the amendments and will examine the bill when that process is concluded.

The Hon. IAN COHEN [3.47 p.m.]: This bill was comprehensively covered by my colleague Ms Lee Rhiannon. I will go into more detail during the Committee stage. I have some significant concerns. The bill will have a huge impact and the Greens take it very seriously. It sets apart the Government's attitude to law and order. The Greens accept some aspects of the bill, but we have concerns about the provision relating to "reasonable grounds to suspect people in an area with a high incidence of violent crime". We oppose this hot spot provision.

The Greens also believe that the police discretion provisions are broad and vague and open to abuse. Insufficient safeguards have been provided for strip searching people between the ages of 10 and 18 years. We will move amendments to the relevant clauses. The bill sets unreasonable

maximum detention periods for certain categories of people-Aboriginal people, minors, people from a non-English speaking background and the mentally ill. Under the circumstances, a period of two hours with an extension to a maximum of four hours should be sufficient. The Greens have concerns about detaining people without charge.

The bill is too general and gives too much power to the police. I will repeat some of the things that I said in the debate on the Crimes Legislation Amendment (Police and Public Safety) Bill 1998. It is interesting that the Government is developing police powers and responsibilities. As Ms Lee Rhiannon said, we have some grave concerns about significant aspects of this bill and will go into detail about those concerns in the Committee stage.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.49 p.m.], in reply: I thank the honourable members who made substantial contributions to this debate. I do not thank the Leader of the Opposition, whose contribution to this debate was extremely brief. One could hardly call it a significant contribution. Some of the criticisms of honourable members are so wild and off the mark that I will not waste the time of the House responding to them. In making that comment, I do not refer to the contribution of the Christian Democratic Party. I will deal with honourable members' wild assertions and misconceptions about the impact of the bill and how it will operate when I respond to the various amendments to be moved by the Hon. Richard Jones and the Hon. Ian Cohen in Committee. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Parts 1 to 3 agreed to.

The Hon. RICHARD JONES [3.54 p.m.], by leave: I move my amendments Nos 1 to 20 in globo:

No. 1 Page 17, clause 26, lines 17-21. Omit all words on those lines.

No. 2 Page 19, clause 31. Insert after line 15:

(2) A police officer may not conduct a strip search without the oral or written approval of a senior police officer.

(3) A senior police officer who approves or refuses to approve a strip search must record particulars of the decision, including the reasons for the decision.

No. 3 Page 19, clause 32, lines 27-30. Omit all words on those lines. Insert instead:

(4) The police officer or other person must conduct the search as quickly as is reasonably practicable.

(5) The police officer or other person must comply with the following:

(a) the search must be conducted in a private area and in a way that provides reasonable privacy for the person searched,

(b) the search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.

(6) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person

being present.

No. 4 Page 20, part 4. Insert after line 27:

33 Searches of children and persons with impaired intellectual functioning

(1) A search of a person who is under 18 years of age, or of a person who has impaired intellectual functioning, must, unless there is no other alternative in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of a person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.

(2) In this section:

impaired intellectual functioning means:

(a) total or partial loss of a person's mental functions, or

(b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or

(c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

No. 5 Pages 20 and 21, line 29 on page 20 to line 15 on page 21. Omit all words on those lines. Insert instead:

(1) A police officer or other person who strip searches a person must not, as far as is reasonably practicable in the circumstances, conduct the search in the presence or view of a person who is of the opposite sex to the person being searched.

No. 6 Pages 21 and 22, line 29 on page 21 to line 3 on page 22. Omit all words on those lines.

No. 7 Page 52, clause 92. Insert after line 4:

(5) Despite any other provision of this section, a police officer who establishes a crime scene and who reasonably suspects that the exercise of a power set out in section 95 (1) may cause structural damage to a building may exercise that power only if a Supreme Court judge issues a crime scene warrant in respect of the crime scene and the warrant authorises the doing of the thing.

(6) This Part applies to an application for a crime scene warrant under this section in the same way as it applies to an application made to an authorised officer for a crime scene warrant.

No. 8 Page 52, clause 92. Insert after line 4:

(5) A police officer who exercises crime scene powers under this Part must exercise those powers in such a way as to cause the least amount of damage to property that is consistent with achieving the purpose of exercising those powers.

No. 9 Page 56, clause 100, line 17. Insert ", or to a police officer" after "law".

No. 10 Page 67, clause 119, line 24. Insert "in writing in a form prescribed by the regulations" after "person".

No. 11 Page 81, clause 138, line 10. Omit "may". Insert instead "will".

No. 12 Page 81, clause 138. Insert after line 19:

(5) An examination under this section must be limited to what is reasonable for the purposes of the examination.

No. 13 Page 87, Part 11. Insert after line 21:

151 Records relating to dog drug searches

The Commissioner must cause a record to be kept of the following matters:

(a) the result of any search conducted in the course of carrying out general drug detection of under this Division, including any instance where a dog has indicated the presence of prohibited drugs or plants and none have been found,

(b) the action, if any, taken against any person as a result of general drug detection under this Division,

(c) the costs of general drug detection under this Division, including particulars of the number of police and dogs used and other resources used.

No. 14 Page 109, clause 189, lines 22-24. Omit all words on those lines.

No. 15 Page 116, Part 15. Insert after line 26:

205 Right to remain silent not affected

Nothing in this Act affects the right of a person to refuse to answer questions, unless required to answer the question by or under an Act.

No. 16 Page 129, Part 17. Insert after line 32:

Division 3 General

230 Receipts for seized objects

(1) A police officer who seizes property under this Act must give a receipt for the property.

(2) The receipt must:

(a) be given to the person from whom the property was seized or the occupier of any premises at which the property was seized, or

(b) if no such person is present, be left at the premises.

231 Copies of seized documents

A police officer who seizes documents under this Act must, at the request of a person entitled to possession of the documents, provide to the person certified copies of the documents.

No. 17 Page 133, clause 237. Insert after line 5:

(2) Without limiting subsection (1), the Commissioner must issue instructions and guidelines under the *Police Act 1990* with respect to the exercise of powers to give directions under Part 14.

No. 18 Page 133, clause 238, line 16. Omit "20". Insert instead "10".

No. 19 Page 133, clause 238, line 17. Omit "50". Insert instead "25".

No. 20 Page 133, clause 242, lines 27-32. Omit all words on those lines. Insert instead:

exercise of the functions conferred on police officers under Part 4, Division 3 of Part 5 and Parts 7, 11, 15 and 17.

Amendment No. 1 removes the provision that a police officer may take into account the fact that a person is in "a location with a high incidence of violent crime" in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody. Amendment No. 2 provides that provisions relating to safeguards for strip searches that are included in the Commonwealth Crimes Act 1914 are also included in this legislation. I note that the Commonwealth Government is, in fact, less conservative than the Carr Government. In particular, the Commonwealth Act provides that a strip search may be conducted only if a constable of the rank of superintendent or higher has approved the conduct of the search; and a person who gives or refuses to give an approval must make a record of the decision and the reasons for it.

Amendment No. 3 strengthens the privacy provisions in relation to all searches, ensuring that searches are not conducted in the presence or view of someone whose presence is not necessary, and providing that a parent, guardian or personal representative of the person may be present during the search. Amendment No. 4 strengthens the provisions relating to strip searches conducted on children and persons with impaired intellectual functioning. It provides that a parent, guardian or personal representative "must, unless there is no other alternative in the circumstances" be present. Amendment No. 4 strengthens the existing provisions without making them unworkable. Amendments Nos 5 and 6 are consequential amendments.

Amendments Nos 7 and 8 provide for safeguards in relation to police powers at crime scenes. Amendment No. 7 provides that a police officer may only cause structural damage to a property if that officer is in possession of a warrant to that effect. Amendment No. 8 makes it clear that an officer must exercise those powers in a way that causes the least amount of damage to property. Amendment No. 9 allows a person conducting citizens arrests to take the arrested person to a police officer—which is, in reality, what people do.

Amendment No. 10 provides that when applying for a detention warrant, a person who makes an application in person must also provide a written application. Amendments Nos 11 and 12 provide that a medical practitioner may make such an examination of a person in custody "as is reasonable in order to ascertain the facts which may afford such evidence". Additionally, a medical examination should only take place if there are reasonable grounds for believing that an examination of the person "will provide evidence".

Amendment No. 13 provides that the commissioner must cause a record to be kept of the result of all drug dog searches conducted, the outcome of those searches, and the cost of general drug detection operations. Amendment No. 14 removes the provision that would allow a police officer to reach into a person's car to grab their keys in order to immobilise the vehicle before breath testing a person, if the officer reasonably suspects that the person is likely to abscond. Amendment No. 15 provides that nothing in the Act affects the right of a person to refuse to answer questions, unless required to answer the questions by or under an Act. Amendment No. 16 provides that in relation to property in police custody, when an item is seized a receipt should be left or given and, upon request, a police officer should provide certified copies of documents seized from the person entitled to possess the document.

Amendment No. 17 provides that the commissioner must issue instructions and guidelines in

relation to the move-on powers. Amendments Nos 18 and 19 reduce the maximum penalty units for offences prescribed by regulation from 20 to 10, and from 50 to 25 penalty units respectively. Amendment No. 20 provides that the Ombudsman monitor part 4, division 3 of part 5, and parts 7, 11, 15 and 17. These amendments are not far-reaching but reasonable. Regrettably, the Carr Government is far more conservative than the Commonwealth—as is the Opposition, I suspect. It makes me wonder why people who used to vote Labor would still vote Labor when the present Government is so conservative.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [3.57 p.m.]: I congratulate the Hon. Richard Jones on acknowledging the number of matters listed on the notice paper for debate by dealing with his detailed amendments in globo. However, unfortunately, the Opposition will not support his amendments. To assist the carriage of this legislation through to finality this afternoon, I also take this opportunity to indicate to the Greens that the Opposition will not support any of the amendments they propose to move in Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.58 p.m.]: I seek leave to incorporate my detailed reply to the amendments moved by the Hon. Richard Jones.

Leave granted.

The Hon. Richard Jones has also proposed a number of amendments to the Bill. The Government does not support these proposals.

As previously mentioned, the Law Enforcement (Powers and Responsibilities) Bill 2002 is a consolidation Bill. The Bill reflects existing law and does not extend police powers.

The Parliament has already taken its decisions on the matters included in the Bill. It is simply not appropriate to reconsider these matters in the context of this Bill.

Reverend the Hon. FRED NILE [3.59 p.m.]: The Christian Democratic Party supports the bill and hopes that it will progress through the Parliament in its current form. Therefore we do not support the amendments moved by the Hon. Richard Jones and those proposed by the Hon. Ian Cohen. As the Hon. Richard Jones highlighted, there are two views here. One can stand in the civil libertarian corner or on the side of the community, which wants to see police performing their duty—which is to protect the community. And, indeed, that is the purpose of the legislation.

The Hon. IAN COHEN [3.59 p.m.], by leave: I move Greens amendments Nos 1 and 3 in globo:

No. 1 Page 17, part 4, clause 26, line 21. Insert "However, this fact cannot be used as the sole basis for a request that a person submit to a search and must be used in combination with any other relevant factors." after "custody.".

No. 3 Page 18, part 4, clause 26. Insert after line 4:

(7) For the purposes of this section, a location is not to be taken as a location with a high incidence of violent crime unless a Local Area Commander of Police has, after taking into account violent crime statistics, defined and documented the area as such and communicated this to police officers in his or her command.

Amendment No. 1 will amend clause 26 (3) of the bill. Clause 26 provides a power to search for knives and other dangerous implements. Subclause (3) specifies:

For the purpose of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody.

The Greens were critical of the hotspot provision when it was first introduced in the Police and

Public Safety Bill in 1998. In Committee on that bill I said:

> How will it be determined what locations have high incidences of crime? Who will decide which areas are areas with high incidences of crime—the Minister for Police, the Commissioner of Police, individual police stations or officers? There are no such criteria in the bill. Police will have enormous discretion in the decision-making process. It appears that the "reasonable grounds to suspect" test will be somewhat reduced if an area is designated as a hotspot. That a person is found in a hotspot is only one consideration. What weight will be given to this factor by the magistrates who will be required to determine the issue? Will it be given extra weight because of this provision? How the courts will construe the provision is unclear.
>
> The clause as currently drafted may lead to a whole suburb or area being blacklisted. People, perhaps tourists, may be told not to go there because police have the power to search anyone, whenever they want to, for knives and dangerous implements.

At the time the bill was being debated publicly, the Council for Civil Liberties outlined its concerns in a letter to the Premier dated 4 May, stating that the bill:

> ... seeks to maintain the established "reasonable suspicion" principle, but then subverts it by suggesting that a person's mere presence in a particular location...may create a "reasonable suspicion" that a person is carrying a weapon. This is clearly an abuse of the notion of "reasonable suspicion".

Since the bill has been enacted the Ombudsman has undertaken a review of the Police and Public Safety Act, the provisions of which are now contained in this legislation. The Ombudsman was critical of the Act, in particular the hotspot provision. A submission from the New South Wales Young Lawyers summarises the problem with regard to the hotspot provision. Parts of that submission are reproduced in the report. The New South Wales Young Lawyers found it offensive:

That a person's right not to be subjected to a strip search is undermined by the location in which they encounter a police officer. The mere fact that a person finds oneself in a location in which there has historically been a high incidence of violent crime, is not a fact that is related to the criminality of the individual. It is a factor which should not be taken into account to arbitrarily validate what would otherwise be an illegal search founded on no or little suspicion.

Even the police had difficulties with the provision. The Police Association in its submission to the review specified:

The legislation does not provide any guidelines as to what constitutes this type of area and because of this, police are required to determine such locations.

One local area commander said, during the Ombudsman's review, that he left it up to individual officers to determine what the provision meant. The report stated:

> One constable said that it meant the whole of the town, while another officer said that he would be "scratching for a place round here with a high level of violent crime", while a third officer nominated specific locations. Such uncertainty about the practical effect of the provision has the potential to impede the proper use of the powers.

One submission to the Ombudsman found that "police were using the location grounds to justify searches 'in areas as innocuous as Springwood, Riverstone and Richmond'". This issue was addressed by the Greens in an amendment to the bill in 1998 which was rejected by the Government. The Greens sought the deletion of the word "location" and the insertion of the words, "an area declared by the Minister for the purposes of this subsection to be an area". The amendment specified that the area must be made only on the recommendation of the Commissioner for Police. The Minister was to issue guidelines to be followed by the Commissioner for Police making a recommendation, setting out the criteria for determining whether an area should be

declared as an area with a high incidence of violent crime. This would have ensured that everyone, including the police, were aware of which areas were areas with a high incidence of violent crime. The Ombudsman pointed out that some police were interpreting the section to mean that it may be the only grounds for a search—that a person's presence in such a location is, of itself, sufficient to justify a search. The Ombudsman's report specified:

Some of the records that we looked at indicated that people were being searched solely because of their presence in a particular area. The fact is that the Act does not permit this, but it is possible that such use is encouraged by singling out the hotspot element in its legislative reform.

That is not all. There is evidence that the section is being applied in other areas of the Act, despite only being relevant to search for knives and other dangerous implements. The report specified further:

The hotspots provisions apply only to the search power created by the Police and Public Safety Act, but there is evidence of the use of hotspots as the justification for the use of the "reasonable directions" power.

The review found that there is confusion as to the extent to which the hotspot provision can be relied on, what determines and defines a location with a high incidence of violent crime; and the powers in the Act that can rely on it as an element. The Ombudsman pointed out that a location that is categorised as a hotspot area is often a place that is frequented by a large number of law-abiding citizens. For instance, the five hotspot areas identified by the Bureau of Crime Statistics and Research [BOCSAR] in 1997 were all areas that attract significant numbers of people conducting lawful business or other pursuits. The Ombudsman's report argued:

To allow a practice where people are searched purely or largely on the basis of their presence in such a location effectively establishes a random or arbitrary search power.

The Ombudsman made recommendations regarding legislative changes to the hotspot provision. The recommendation specified:

If presence in a location with a high incidence of violent crime is to be retained as a factor police may take into account in determining whether to search for knives and other implements:

- the section should be amended to make it clear that this factor can only be used in combination with other factors; and
- based on their analysis of violent crime, local commanders should be required to define and document locations in their command where this provision would have effect and advise others accordingly.

Greens amendments Nos 1 and 3 simply implement the recommendation of the Ombudsman regarding the hotspot provision, and I commend them to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.08 p.m.]: The Government opposes these amendments. With regard to amendment No. 1, the Minister's office has opposed any change to this provision. The matter is being addressed through the New South Wales police knowledge map. Amendment No. 3 relates to a recommendation the Ombudsman made in its review of these powers. All local area commanders are required to complete analysis of crime environment [ACE] reports. These ACE reports are a detailed analysis of crime committed within each local area command [LAC] and highlight areas of high incidence of violent crime. The information contained in these reports is widely distributed amongst the LACs and the reports themselves are made available to all officers.

The Hon. JAMES SAMIOS [4.09 p.m.]: The Opposition does not support the amendments.

The Hon. IAN COHEN [4.10 p.m.], by leave: I move Greens amendments Nos 4, 5 and 6 in globo:

No. 4 Page 21, part 4, clause 33, lines 8-15. Omit all words on those lines.

No. 5 Pages 21 and 22, part 4, clause 33, line 29 on page 21 to line 3 on page 22. Omit all words on those lines.

No. 6 Page 22, part 4. Insert after line 5:

34 Strip searches of children between 10 and 18 years and persons suffering incapacity

(1) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who is incapable of managing his or her affairs, may be conducted only if:

(a) the child or person has been arrested and charged with an offence, or

(b) a Magistrate orders that it be conducted.

(2) A strip search of any such child or person must be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.

(3) The requirements of this section are in addition to any other requirements of this Part.

(4) In deciding whether to make an order under this section, a Magistrate must have regard to the following:

(a) the seriousness of the circumstances surrounding the offence,

(b) the age of the person,

(c) any disability of the person,

(d) in the case of a child:

(i) the best interests of the child, and

(ii) the child's ethnic and cultural origins, and

(iii) so far as they can be ascertained, any wishes of the child with respect to whether the order should be granted, and

(iv) any wishes expressed by the parent or guardian of the child with respect to whether the order should be granted,

(e) any other matters the Magistrate thinks fit.

These amendments relate to strip searches of children aged between 10 and 18 years and persons suffering incapacity. The Greens believe there are insufficient safeguards contained in the provisions relating to strip searching of children aged between 10 and 18 and persons suffering incapacity. Indeed, many of the safeguards contained in the exposure draft of the bill have been stripped in the bill. Clauses 1, 2 and 3 of the exposure draft specify that a strip search of a child between 10 and 18

years of age or a person who is incapable of managing his or her affairs may be carried out only if the child or person has been arrested and charged with an offence or a magistrate orders that it be conducted.

In deciding whether to make the order the magistrate is to have regard to the seriousness of the offence, the age or disability of the person and any other matter the magistrate thinks is relevant. The only safeguard remaining in the bill is that, if the person is aged between 10 and 18 years or has impaired intellectual function, the search must be conducted in the presence of a parent, guardian or person acceptable to the child, and the person must be capable of representing the interests of the child. This requirement can be waived if it is not reasonably practicable in the circumstances. The Greens are of the view that additional safeguards should be in place in situations where the person is aged between 10 and 18 or has an intellectual disability.

Strip searching is a most intrusive form of intervention. It involves the use of force or threat of force and has the additional element that the person being searched is required to remove his or her clothing and have his or her naked body closely examined by a police officer. Most adults would feel embarrassed about exposing their naked body to an outsider. For children it is likely to be a particularly frightening, embarrassing and humiliating experience. Many cultures place great emphasis on personal modesty. Some cultures require women and girls to keep their faces and bodies concealed from public gaze. Laws that require individuals to undress and appear naked in front of a stranger are particularly offensive to people from such cultures.

Older children, and particularly adolescents and children approaching puberty, are often self-conscious about their bodies and are likely to be greatly distressed by strip searches. The Crimes Forensic Procedures Act 2000, which allows the taking of samples from 10 to 17 year olds, has far more safeguards for strip searches than are provided for in this bill, despite the fact that forensic sampling is less intrusive than strip searching. Forensic sampling of 10 to 17 year olds can only take place with a magistrate's order and the magistrate must take into account the best interests and wishes of the child. These requirements have been completely stripped from the bill. The Greens are of the view that a 10 to 17 year old or a person with an intellectual disability can only be strip searched if the person has been arrested or charged with an offence or by order of the magistrate.

In deciding whether a magistrate should make the order, the magistrate should have regard to the seriousness of the events, the age or disability of the person, the best interests of the child, the child's ethnic and cultural origins, the wishes of the child and any wishes expressed by the parent or guardian, and any other matter that the magistrate thinks fit. That is set out in amendment No. 6. Amendments Nos 4 and 5 are consequential. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.13 p.m.]: The Government opposes the amendments. I seek leave to have my reasons incorporated in *Hansard.*

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments. The bill contains appropriate levels of safeguards which, in turn, are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.13 p.m.]: The Opposition opposes the amendments.

The CHAIRMAN: Order! As a number of the amendments conflict, I propose first to put the question in relation to all the amendments of the Hon. Richard Jones that do not conflict. I will then put separate questions in relation to the remaining amendments.

Amendments Nos 2, 3, 4 and 7 to 20 inclusive of the Hon. Richard Jones negatived.

Amendment No. 1 of the Hon. Richard Jones negatived.

Amendment No. 5 of the Hon. Richard Jones negatived.

Amendment No. 6 of the Hon. Richard Jones negatived.

Question—That Greens amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 6

Mr Cohen
Mr R. S. L. Jones
Ms Rhiannon
Mrs Sham-House
Tellers,
Mr Breen
Dr Chesterfield-Evans

Noes, 22

Ms Burnswoods	Mr Hatzistergos	Mr Samios
Mr Colless	Mr M. I. Jones	Mr Tingle
Mr Dyer	Mr Lynn	Mr Tsang
Ms Fazio	Mr Macdonald	Mr West
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	*Tellers,*
Mr Gay	Mrs Pavey	Mr Jobling
Mr Harwin	Mr Pearce	Mr Primrose

Question resolved in the negative.

Greens amendment No. 1 negatived.

Greens amendment No. 3 negatived.

Greens amendment No. 4 negatived.

The CHAIRMAN: As Greens amendment No. 5 is the same as an amendment of the Hon. Richard Jones that was negatived, there is no requirement to put a question in relation to it.

Greens amendment No. 6 negatived.

The Hon. IAN COHEN [4.23 p.m.]: I move Greens amendment No. 2:

No. 2 Page 17, part 4, clause 26. Insert after line 25:

(5) In conducting a search of a student's bag or locker under this section, a police officer must:

(a) invite the student to be present during the search, and

(b) if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search, and

(c) ensure that the search is conducted in such a way that the student is not required to expose the contents of the bag or locker to a teacher or other employee of the school or to another student except for a person that the student has nominated to be

present during the search.

The Greens are extremely concerned about the powers to randomly search school lockers. Such powers can constitute a breach of students' personal privacy. While the Greens accept that it may be necessary to search a student's locker if there are reasonable grounds to suspect that a student has a dangerous knife or weapon hidden in the locker, the search should be carried out in a way that does not embarrass the student and is sensitive to the student's privacy. Clause 26 (2) states:

If the person is in a school and is a student at the school, the police officer may also request that the person submit to a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.

The only restraint on this power is that when conducting the search the police officer must, if possible, allow the student to nominate an adult who is on the school premises to be present during the search. As well as that, the Greens believe that the search should be conditional upon the police advising the student of the grounds of their belief that a dangerous knife or weapon is concealed in the locker, and the student should be invited to be present during the search. There should also be a proviso that a student should not be required to expose the contents of a bag in view of teachers or other students. Students can be extremely embarrassed and later be teased if they must display personal items such as private letters, sanitary products, contraceptive lubricants and other personal items such as photographs, jewellery and make-up.

The amendment will ensure that the police inform the student of the ground for their belief that a dangerous knife or weapon is concealed in the student's locker. This is set out in Greens amendment No. 21, which I will move later. The amendment will also ensure that the police invite the student to be present during the search, and that the student will not be required to expose the contents of a bag or personal effects contained in a locker in view of teachers and other students. I commend Greens amendment No. 2 to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.25 p.m.]: The Government opposes this amendment. I seek leave to incorporate my comments in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments.

The Bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.25 p.m.]: The Opposition opposes the amendment.

Amendment negatived.

Part 4 agreed to.

Part 5 agreed to.

The Hon. IAN COHEN [4.26 p.m.], by leave: I move Greens amendments Nos 7 and 8 in globo:

No. 7 Page 45, part 6, clause 81. Insert after line 20:

(e) a child under the age of 18 years present in the dwelling, or

No. 8 Page 48, part 6, clause 85. Insert after line 13:

(b) to protect any child under the age of 18 years present in the dwelling from being subjected to violence or from being a witness to violence, and

Part 6 sets out the search, entry and seizure powers relating to domestic violence offences. A "domestic violence offence" is defined as a personal or violent offence committed against certain persons. These are set out in clause 81 and include the person's spouse, a de facto partner, people in an intimate personal relationship and people living in the same household. However, it does not include the situation when, for example, the mother lives in the house and the mother's daughter and boyfriend are visiting. The boyfriend commits a personal violent offence against the mother and the daughter witnesses an incident of domestic violence. The mother is covered but the daughter is not. In the Greens' view the definition of "domestic violence offence" should be broadened to include violence against any child and any child who witnesses violence and the child is present on the premises at the time entry is sought. As well as the search, entry and seizure powers, the police should also have the power to take any necessary steps to protect a child present in the dwelling from being the subject of violence or being a witness to violence. Greens amendments Nos 7 and 8 seek to deal with these two issues. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.27 p.m.]: These amendments are not supported. The provisions in the bill reflect existing law and adequately provide for the protection of children.

The Hon. JAMES SAMIOS [4.27 p.m.]: The Opposition does not support the amendments.

Amendments negatived.

Part 6 agreed to.

The Hon. IAN COHEN [4.28 p.m.], by leave: I move Greens amendments Nos 9 to 15 in globo:

No. 9 page 54, Part 7. Insert after line 7:

96 Unaccompanied children at crime scene

If a police officer exercises any of the crime scene powers contained in section 95 (1) (a)-(d) in relation to a child under the age of 18 years who is not under the care or custody of a responsible adult and the exercise of the power prevents the child from entering or staying in the child's normal place of residence, the police officer must take reasonable steps to ensure that the child is able to go or be taken to a safe place.

No. 10 Page 64, part 9, clause 115, line 1. Insert "(or 2 hours in the case of a person of a class referred to in section 112 (1))" after "4 hours".

No. 11 Page 66, part 9, clause 118, line 33. Insert "(or 2 hours in the case of a person of a class referred to in section 112 (1))" after "4 hours".

No. 12 Page 67, part 9, clause 118, line 2. Insert "(or 4 hours in the case of a person of a class referred to in section 112 (1))" after "8 hours".

No. 13 Page 67, part 9, clause 118, line 16. Insert "(or 2-hour period in the case of a person of a class referred to in section 112 (1))" after "4-hour period".

No. 14 Page 67, part 9, clause 118. Insert at the end of line 16:

, and

(e) an extension of the period is justified in all the circumstances after consideration of the information provided under section 120.

No. 15 Page 68, part 9, clause 120. Insert after line 10:

(e) the age of the person,

(f) the total time the person has been held since the person's arrest,

(g) the person's physical and mental capacity and condition.

Greens amendment No. 9 deals with unaccompanied children at crime scenes. We are of the view that if the police direct an unaccompanied child to leave or not to enter a crime scene that is the child's normal place of residence, they should be obliged to ensure that the child has a safe place to go and, wherever possible, assist the child to get there. The Greens amendment would ensure that if a police officer, in exercising any of the crime scene powers contained in proposed section 95 (1) (a) to (d)—the provisions relate to directing persons to leave or removing persons from crime scenes; and removing vehicles, vessels or aircraft from crime scenes—prevents a person from entering a crime scene and the person is under 18 years of age and not in the care of a responsible adult, and if the exercising of the power prevents the child from staying in the child's normal place of residence, the police officer must take reasonable steps to ensure that the child is able to get to a safe place.

With regard to amendments Nos 10, 11, 12 and 13, the bill specifies that an arrested person can be held for a reasonable time to allow investigation of an offence or other offences as long as the time does not exceed four hours unless a detention warranty is obtained from an authorised officer. An authorised officer may issue a warrant that extends the maximum investigation period up to eight hours. The maximum investigation period cannot be extended more than once. The Greens believe that for vulnerable persons—such as children, indigenous persons, persons from non-English-speaking backgrounds, persons with a disability and people with a mental illness—the maximum investigation period should be two hours, to a maximum of four hours if a detention warrant is required. The Greens believe that there is more likelihood that false confessions may be obtained from these people if they are interviewed too long or they will experience considerable stress, especially if there are language, cultural, age and disability barriers.

With regard to amendments Nos 14 and 15, police officers are currently allowed to detain individuals for a maximum of four hours to investigate a person's involvement in the commission of the offence for which the person has been arrested. If a longer period of time is required the police officer must apply to the authorised justice for a detention warrant. The Greens believe that when applying to an authorised justice for a detention warrant police should be required to include in the application the age of the detainee, the total length of time the detainee has been held since arrest, and the detainee's physical and mental capacity and condition. This will give the authorised officer more information to decide whether to grant the detention warrant. Accordingly, the amendments specify that applications for a warrant must include the information set out in proposed section 120 of the bill and the age of the person, the total time the person has been held since arrest and the person's physical and mental condition.

Proposed section 118 sets out when a detention warrant to extend the investigation is warranted. The authorised officer must be satisfied of the various things set out in proposed section 118 (5) before he or she can issue a detention warrant. However, all the factors focus on the police and the investigation. There is no focus on the detainee and there is also no requirement that the authorised officer consider the information that must be supplied by the police officer to the authorised officer in order for him or her to make his or her decision. Amendment No. 14 specifies that the authorised justice can also look at whether an extension of the period is justified in all the circumstances, given the accommodation provided under proposed section 120. This ties the clause back to the information that is required to be supplied when applying for a detention warrant.. In the Greens view the officer should consider the information contained in the application to help him or her decide whether to grant the extension. I commend the Greens amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.32 p.m.]: The Government does not support Greens amendments Nos 9 to 15. I seek leave to incorporate my reply in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the Bill. The Government does not support these amendments.

The Bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.32 p.m.]: The Opposition does not support these amendments.

Amendments negatived.

The Hon. IAN COHEN [4.33 p.m.]: by leave, I move Greens amendments Nos 16, 17, 18 and 19 in globo:

No. 16 Page 70, part 9, clause 123. Insert at the end of line 12:

, and

(c) in the case of a person of a class referred to in section 112 (1), provide reasonable assistance to enable the person to make the communication.

No. 17 Page 72, part 9, clause 124. Insert at the end of line 6:

, and

(c) provide reasonable assistance to enable the person to make the communication.

No. 18 Page 81, part 10. Insert after line 19:

139 Medical examinations of children

(1) A medical examination of a child in lawful custody who is under 18 years of age may be conducted only if a Magistrate orders that it be conducted.

(2) A medical examination of any such child must be conducted in the presence of a parent or guardian of the child being examined or, if that is not acceptable to the child, in the presence of another person (other than a police officer) who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child.

(3) The requirements of this section are in addition to any other requirements of this Part.

(4) In deciding whether to make an order under this section, a Magistrate must have regard to the following:

(a) the seriousness of the circumstances surrounding the offence,

(b) the best interests of the child,

(c) the child's ethnic and cultural origins,

(d) so far as they can be ascertained, any wishes of the child with respect to whether the order should be granted,

(e) any wishes expressed by the parent or guardian of the child with respect to whether the order should be granted,

(f) any other matters the Magistrate thinks fit.

(5) Before ascertaining the wishes of the child with respect to whether the order should be granted, a person other than the medical practitioner who is to conduct the examination, must inform the child of the nature of the examination and its effects.

No. 19 Page 109, part 12, clause 189. Insert after line 29:

(5) If a police officer exercises a power under subsection (1) in relation to a person under the age of 18 years who is not under the care or custody of a responsible adult, the police officer must take reasonable steps to ensure that the person is able to go or be taken to their place of residence or another safe place.

With regard to amendments Nos 16 and 17, 123 specifies that detained persons have a right to communicate with a friend, relative, guardian or independent person and a legal practitioner before any investigation procedure occurs. Similarly, proposed section 124 specifies that if the detained person is a foreign national he or she has a right to communicate with a consular official before any investigation procedure starts. The Greens are of the view that these provisions should be made more workable for young people, Aborigines or Torres Strait Island people, people from non-English-speaking backgrounds, people with a disability or foreign nationals. The amendment specifies that for these people the police must provide any assistance necessary to enable the person to communicate with a friend or, in the case of a foreign national, a consular official. A child may be unfamiliar with the use of phones or may need help to contact a lawyer who is willing to assist. Similarly, foreign nationals, especially those who are unable to speak any or little English or who may be unfamiliar with how the Australian system operates, may need help to achieve this right.

Amendment No. 18 deals with the medical examinations of children. The Greens are of the view that a child should not be required to undergo a medical examination where the purpose is to provide evidence of the commission of an offence, except in certain circumstances and when certain procedures and processes have been followed. In the Greens view the medical examination must be ordered by a magistrate, and the child's welfare, culture and wishes must be taken into account by the magistrate. In addition, the child's parents or other nominated adult must be present with the child while the medical examination is being performed, and the child should be counselled by a person other than the medical practitioner about the nature of the examination and its effects.

Amendment No. 19 deals with the situation arising when police take the keys of a vehicle or immobilise a vehicle and children are involved. A child in a car immobilised by a police officer in a remote location or some distance from his or her home or public transport may be at risk. Where this power is exercised in relation to a person under the age of 18 years the police should be required, if the child is not accompanied by a parent, relative or responsible adult, to deliver the child to his or her home or the nearest public transport terminal from which the child can travel by public transport to his or her normal place of residence or to some other place. If the child is delivered to a public transport terminal the police should ensure that the child has the necessary fare for the journey home. The Greens' amendment specifies that a police officer who exercises a power under proposed section 189—the power to prevent driving by persons who are under the influence of alcohol or other drugs—and the person is under the age of 18 and is not in the care or custody of a responsible adult, the police officer must take reasonable steps to ensure that the person is able to get to his or her place of residence or another safe place. I commend these amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.37 p.m.]: The Government does not support Greens amendments Nos 16 to 19. Again, I seek leave to incorporate my reply in *Hansard.*

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the Bill. The

Government does not support these amendments.

The Bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.37 p.m.]: The Opposition does not support these amendments.

Amendments negatived.

Parts 7 to 13 agreed to.

The Hon. IAN COHEN [4.38 p.m.]: I move:

No. 20 Page 113, part 14, clause 197, lines 12-14. Omit all words on those lines.

This amendment deletes proposed section 197 (1) (c). The Greens are strongly opposed to the move-on powers, as we were in 1998 when the original legislation was introduced. We opposed these powers mainly because we predicted that they would be used primarily on young people, indigenous people, homeless people and those who for cultural, social or economic reasons spend a lot of time in public places. The predictions made by me and other crossbench members, such as the Hon. Richard Jones, have proved to be correct. The Ombudsman's review of the police and public safety Acts contains some alarming statistics and observations regarding the move-on powers. The review found—as was predicted by the Greens—that a high proportion of those given directions under the Act were from indigenous backgrounds. The review found that 3,194 people, or 22 per cent, of the 14,555 people given directions between 1 July 1998 and 30 June 1999 were Aboriginal or Torres Strait Islander people. However, they comprise only 2 per cent of the general population. In addition, 48 per cent of people given directions were under 17 years of age and a further 31 per cent were aged between 18 and 25. Almost 80 per cent of people were under 25 years of age.

Another question that the Greens would like answered is: How many homeless people, people with intellectual or physical disability, or people with a mental illness were given directions? Even going by age and Aboriginality, one can see from the statistics that the legislation is being used disproportionately on these people. This is an outrage and general police harassment of indigenous and young people. The review also found that the power is being used more in certain areas of the State than in others. Four local area commands—Darling River, Castlereagh, Barwon and Barrier—were many times more likely to use the powers than other areas of the State. The highest recorded use of the police direction power was in the Darling River local area command, which takes in Bourke, Brewarrina and Cobar in western New South Wales. This was followed by Castlereagh, which is centred at Walgett; Barwon, centred at Moree; and Barrier, which takes in Broken Hill, Wilcannia and Menindee. What is common to all the country towns mentioned is that they have large indigenous populations. It is well documented that in these towns many Aboriginal people are charged with summary offences, particularly offensive language and conduct. This bill provides yet another opportunity for police to harass Aboriginal people in areas where they are already subjected to harassment and often charged with many other minor offences.

The amendment seeks to remove proposed section 197 (1) (c). Currently the bill specifies that a police officer may give a direction to a person in a public place if the police officer believes on reasonable grounds that the person's behaviour or presence in the place "is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness". This provision should be removed from the bill as it is being used to unfairly harass certain groups of people, particularly young people and indigenous people. For example, a group of young people may be noisy or may be involved in skateboarding or other recreational activities which may startle some people, but this is not a valid reason for requiring them to leave a public place. While we still oppose the whole of the part relating to the power to give directions, removal of proposed section 197 (1) (c) may reduce the incidence of this power being used disproportionately on certain groups of people. I commend Greens amendment No. 20 to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.42 p.m.]: The Government cannot support this amendment: it is already existing law. I seek leave to incorporate my further comments in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments.

The bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.42 p.m.]: The Opposition does not support the amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 6

Dr Chesterfield-Evans
Mr R. S. L. Jones
Ms Rhiannon
Mrs Sham-House
Tellers,
Mr Breen
Mr Cohen

Noes, 23

Mr Colless	Mr M. I. Jones	Mr Tingle
Mr Dyer	Mr Lynn	Mr Tsang
Mr Egan	Mr Macdonald	Mr West
Ms Fazio	Reverend Dr Moyes	
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	
Mr Gay	Mrs Pavey	*Tellers,*
Mr Harwin	Mr Pearce	Mr Jobling
Mr Hatzistergos	Mr Samios	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Part 14 agreed to.

The Hon. IAN COHEN [4.50 p.m.], by leave: I move Greens amendments Nos 21, 22 and 23 in globo:

No. 21 Page 115, part 15, clause 201. Insert after line 16:

(2) In providing the person with the reason for the exercise of the power under subsection (1) (c), the police officer must provide the information in sufficient detail to enable the person to understand the basis for the exercise of the power and must include in any reason given:

(a) the particular offence that is being used as the basis for the exercise of the power, and

(b) in relation to a search conducted under Part 4, except for a search conducted under Division 3 of Part 4:

(i) the nature of the article or thing being searched for, and

(ii) the reason why the police officer believes the article or thing is in the possession or control of the person or in the place or thing that is the subject of the search, and

(iii) the reason why the police officer believes that the article or thing is related to the commission of an offence or will be used in the commission of an offence, and

(c) in relation to a search conducted under Division 3 of Part 4, the reason why the police officer believes that person has a dangerous implement in his or her custody or school locker.

No. 22 Page 116, part 15. Insert after line 26:

205 Written record of exercise of power

(1) A police officer must keep a written record of any request made under Part 3 requiring a person to disclose his or her identity or the identity of another person or of any search conducted under Part 4.

(2) The record must be kept in sufficient detail to enable a person to understand the basis for the exercise of the power and must include:

(a) the particular offence that was used as the basis for the exercise of the power, and

(b) in relation to a request to provide identification details under Part 3:

(i) the identity (if known) of the person to whom the request was made, and

(ii) the identity of any other person whose details were obtained, and

(c) in relation to a search conducted under Part 4, except for a search conducted under Division 3 of Part 4:

(i) the identity (if known) of the person or identifying details (if known) of the place or thing that was the subject of the search, and

(ii) the nature of the article or thing being searched for, and

(iii) the reason why the police officer believed the article or thing was in the possession or control of the person or in the place or thing that was the subject of the search, and

(iv) the reason why the police officer believed that the article or thing was related to the commission of an offence or was to be used in the commission of an offence, and

(d) in relation to a search conducted under Division 3 of Part 4:

(i) the identity (if known) of the person that was the subject of the search, and

(ii) the reason why the police officer believed that the person had a dangerous implement in his or her custody or school locker.

No. 23 Page 132, part 19, clause 235. Insert after line 24:

(c) prescribe different amounts of penalties for offences committed by a child under the age of 18 years, and

The Greens believe that before exercising the power to provide identification details under part 3, the power to search and seize without a warrant and the power to conduct a personal search and seize in relation to places and schools under part 4, the police officer should provide enough information to enable a person to understand the exercise of the power. With regard to exercising the power to provide identification details, the police should be required to specify the particular indictable offence that is being used as the basis for the exercise of the power. In relation to a search conducted under part 4, the police officer should specify the nature of the article believed to be concealed on the person and the grounds of the suspicion that it has or will be used for the commission of an offence. In relation to a search of a person, his or her bag or, in the case of a school, a student's locker, for a dangerous implement, the police officer should specify the reason he or she believes that person has a dangerous implement in his or her custody or in the school locker. This information and the reasons should be recorded in writing.

The Greens believe that standard penalties impact unfairly on many young people who are often in full-time education without a regular source of income. They are often less able to pay fines than their adult counterparts. This amendment enables different amounts to be prescribed as penalties for offences committed by a child under the age of 18 years. I commend the amendments to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.51 p.m.]: The Government opposes these amendments. Again, I seek leave to incorporate my reply in *Hansard*.

Leave granted.

The matters raised by the Greens have already been appropriately addressed in the bill. The Government does not support these amendments. The bill contains appropriate levels of safeguards, which in turn are supported by internal police guidelines on the exercise of the relevant powers.

The Hon. JAMES SAMIOS [4.52 p.m.]: The Opposition opposes these amendments.

Amendments negatived.

Parts 15 to 19 agreed to.

Schedules 1 to 5 agreed to.

Title agreed to.

Bill reported from Committee without amendment and report adopted.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.54 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 24

Mr Colless	Mr Kelly	Mrs Sham-Ho
Mr Dyer	Mr Lynn	Mr Tingle
Mr Egan	Mr Macdonald	Mr Tsang
Ms Fazio	Reverend Dr Moyes	Mr West
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	
Mr Gay	Mrs Pavey	*Tellers*
Mr Hatzistergos	Mr Pearce	Mr Jobling
Mr M. I. Jones	Mr Samios	Mr Primrose

Noes, 5

Dr Chesterfield-Evans
Mr Cohen
Ms Rhiannon
Tellers
Mr Breen
Mr R. S. L. Jones

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

Bill Name:	Law Enforcement (Powers And Responsibilities) Bill
Stage:	Second Reading, In Committee, Third Reading
Business Type:	Bill, Debate
Keywords:	2R, COMM, 3R
Speakers:	Nile, Reverend The Hon Fred; Macdonald, The Hon Ian; Gallacher, The Hon Michael; Jones, The Hon Richard; Sham-Ho, The Hon Helen; Rhiannon, Ms Lee; Chesterfield-Evans, The Hon Dr Arthur; Cohen, The Hon Ian; Samios, The Hon James; Chairman
Database:	LC Hansard Extracts - 52nd Parliament of NSW / 523pc064 / 41

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